

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION**

JACQUELINE KELLY,

Plaintiff,

VS.

CIVIL ACTION NO. _____

UNITED STATES OF AMERICA,

Defendant.

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JACQUELINE KELLY, hereinafter sometimes referred to as "Plaintiff," and files Plaintiff's **Original Complaint** complaining of the United States of America, hereinafter sometimes referred to as "Defendant," and would respectfully show the Court the following :

I.

PARTIES, JURISDICTION, SERVICE OF PROCESS AND VENUE

1.1 This is a action arising out of bodily injuries sustained by the Plaintiff JACQUELINE KELLY caused on the premises of a United States Post Office, located in Leroy, New York.

1.2 At the time of the incident giving rise to this litigation, plaintiff was a resident of the County of Genesee, State of New York.

1.3 The Defendant is the United States of America.

1.4 This Federal District Court has jurisdiction of this action, because this action is brought pursuant to and in compliance with 28 U.S.C. §§ 1346(b), 2671-2680 et seq., commonly known as the "Federal Tort Claims Act", and 39 U.S.C. § 409(c) which vests exclusive subject matter jurisdiction of Federal Tort Claims litigation in the Federal District Court.

1.5 The United States of America may be served with process in accordance with Rule 4(l) of the Federal Rules of Civil Procedure by serving a copy of the Summons and of the Complaint on the United States District Attorney Trini Ross, United States Attorney for the Western District of New York, by certified mail, return receipt requested at her office, United States Attorney, Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202 to the attention of the Civil Process Clerk, and by serving a copy of the Summons and Plaintiff's Original Complaint on Pamela Bondi, by certified mail, return receipt requested, at the Attorney General's Office, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, to the attention of the Civil Process Clerk.

1.6 Venue is proper in this district pursuant to 28 U.S.C. § 1391(e), as the United States is a Defendant and a substantial part of the events or omissions giving rise to the claim occurred in this district.

II.

LIABILITY OF THE UNITED STATES OF AMERICA

2.1 This case is commenced and prosecuted against the United State of America pursuant to and in compliance with Title 28 U.S.C. §§2671-2680, commonly referred to as the "Federal Tort Claims Act," and 39 U.S.C. § 101 *et seq.*, commonly referred to as the "Postal Reorganization Act." Liability of the United States is predicated specifically on Title 28 U.S.C. §§ 1346(b)(1) and 2674 and 39 U.S.C. § 409 because the personal injuries and resulting damages of which complaint is made, were proximately caused by the negligence, wrongful acts and/or omissions of employees of the United States of America working for the United States Postal Service (hereinafter sometimes referred to as "USPS") in Leroy, New York, while acting within the scope of their office or employment, under circumstances where the United States of America, if a private person, would be liable to the Plaintiff in the same manner and to the same extent as a private individual.

III.

JURISDICTIONAL PREREQUISITES

3.1 Plaintiff pleads pursuant to Title 28 U.S.C. §§ 2672 and 2675(a), that the claims set forth herein were filed with and presented administratively to the Defendant's agency; the United States Postal Service on May 23, 2024. At least six (6) months have passed since the presentation of Plaintiff's claim, and a final disposition

has not been reached, and, therefore the claim is deemed denied. Accordingly, Plaintiff has complied with all jurisdictional prerequisites and conditions precedent to commencement and prosecution of this litigation.

IV.

**THE UNITED STATES POSTAL SERVICE IS AN AGENCY
OF THE UNITED STATES OF AMERICA**

4.1 The United States Postal Service is an agency of the United States of America. The United States Postal Service is an “independent establishment of the executive branch of the Government of the United States.” 39 U.S.C. §201. The United States of America, Defendant, herein through its agency, the United States Postal Service, at all times material hereto, owned, operated and controlled the United States Postal Office located at 2 Mainstreet, Leroy, New York 14482, and staffed said facility with its agents, servants, and/or employees.

V.

EMPLOYMENT AND COURSE AND SCOPE

5.1 At all times material hereto, all persons involved in supervising and operating the United States Postal Service Office in question were agents, servants, and/or employees of the United States of America, or some other agency thereof, and were at all times material hereto, acting within the course and scope of such employment.

VI.

FACTS

6.1 This is a Federal Tort Claims Action for monetary damages sustained by the Plaintiff JACQUELINE KELLY resulting from personal injuries sustained as a result of dangerous condition within said premises.

6.2 This claim arises from a trip and fall accident on or about November 14, 2023, in Leroy, New York at approximately 4:15 p.m., which occurred on the premises of the United States Post Office located at 2 Main Street, Leroy, New York 14482, caused by Defendant's negligence in causing, permitting and allowing a trap, hazard and nuisance to be and exist for an excessive and unreasonable period of time, despite having notice of said dangerous and hazardous conditions complained of herein prior to the occurrence that resulted in personal injuries and damages to Plaintiff, JACQUELINE KELLY.

6.3 The USPS' failure to exercise reasonable and ordinary care in managing, maintaining, controlling, operating, supervising and inspecting the aforementioned USPS facility, described in Paragraph 6.2 above, on or about November 14, 2023 caused Plaintiff to fall on said premises thereby sustaining injuries and damages as hereinafter alleged.

VII.

CAUSE OF ACTION AGAINST THE UNITED STATES OF AMERICA

7.1 Defendant, the United States of America, was negligent in one or more of the following respects :

1. Failing to maintain the aforesaid premises in a reasonably safe and suitable condition for pedestrians, tenants, business invitees, patrons and guests.
2. Permitting a dangerous condition to exist within said premises.
3. In causing, permitting and allowing a trap, hazard and nuisance to be and exist for an excessive and unreasonable period of time, despite having notice of said dangerous and hazardous conditions.
4. Failing to take the necessary steps to remedy, repair, correct, remove and alleviate said conditions.
5. Failing to warn Plaintiff of said dangerous condition.

7.2 At all times mentioned herein, the employees, agents, and/or representatives of the United States Government were negligent and causative of the injuries and damages sustained by Plaintiff JACQUELINE KELLY.

VIII.

DAMAGES

8.1 As a result of Defendant's negligence, Plaintiff JACQUELINE KELLY has suffered, and continues to suffer, severe injuries, including but not limited to, a right ankle displaced distal fibular and lateral malleolus fracture requiring an open reduction internal fixation surgical procedure, as well as a left ankle nondisplaced fracture of the dorsal surface of the anterior process of the talus; past and future

physical pain and suffering; past and future mental pain; anguish and suffering; past and future medical, health care, and attendant care expenses; permanent physical disfigurement; past and future permanent impairment; loss of enjoyment of life; pecuniary losses; and out of pocket expenses. Such injuries are permanent in nature. Plaintiff JACQUELINE KELLY brings this suit to recover all damages cognizable under law, both state and federal, resulting from the injuries to her as a result of the occurrence in question.

IX.

MEANING OF "DEFENDANT"

9.1 In this Complaint, whenever the term "Defendant" is used, it means Defendant, Defendant's officers, agents, servants, employees and/or representatives. Whenever in this Complaint it is alleged that Defendant did any act or thing, it is meant that Defendant, Defendant's officers, agents, servants, employees, and/or representatives did such act or thing, and that at the time such act or thing was done, it was done with full authorization and ratification of Defendant and was done in the normal and routine course and scope of employment of Defendants officers, agents, servants, employees, and/or representatives. Whenever in this Complaint it is alleged that Defendant omitted any act or thing, it is meant that Defendant, Defendant's officers, agents, servants, employees, and/or representatives omitted such act or thing.

X.

PRAYER

WHEREFORE, Plaintiff, JACQUELINE KELLY, requests that judgment be entered in her favor against the Defendant, The United States of America, and that she be awarded general and special damages in an amount to be proven at trial, with interest on such damages awarded according to law, the costs of this action, together with such other and further relief as the Court deems just and proper.

DATED: Rochester, New York
March 20, 2025

CELLINO LAW LLP

By: 

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